IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

MACON COUNTY INVESTMENTS, INC.; REACH ONE; TEACH ONE OF AMERICA, INC.,	)	
PLAINTIFFS,	)	
v.	)	**CIVIL ACTION NO.: 3:06-cv-224-WKW**
SHERIFF DAVID WARREN, in his official capacity as the SHERIFF OF MACON COUNTY, ALABAMA,	)	
DEFENDANT.	)	

NOTICE OF SUPPLEMENTAL AUTHORITY

COMES NOW, Defendant Sheriff David Warren ("Sheriff Warren") and files this Notice of Supplemental Authority in support of his Motion to Dismiss Plaintiffs' First Amended Complaint [Doc. # 26] as follows:

1. On May 24, 2006, the United States Court of Appeals for the Eleventh Circuit affirmed the dismissal of a complaint which alleged that a city ordinance violated the Equal Protection Clause and found that the plaintiff, a for-profit commercial vendor, lacked standing to bring suit under an ordinance which only created rights in non-profit organizations. *Alkov v. City of Miami Beach*, No. 05-15696, 2006 WL 1428265, at *1 (11th Cir. May 24, 2006)(slip opinion). For the Court's convenience, the opinion is attached to this filing as Exhibit "A."

2. In *Alkov*, a commercial vendor sought to challenge the rejection of certain

applications filed on behalf of *nonprofit organizations* under the city's *nonprofit* vending ordinance. The Eleventh Circuit noted that the ordinance created rights in nonprofit organizations only and not commercial vendors such as the plaintiff. The Eleventh Circuit agreed with the district court's finding that the commercial vendor did not fall within the non-profit category described by the ordinance and the vendor did not offer any reason why he should be able to raise the rights of others. *Id.* Finally, the Eleventh Circuit agreed "with the district court that [the vendor] still would lack standing even if the ordinance applied to commercial vendors, because the only applications whose rejection he contests were submitted on behalf of non-profit organizations." *Id.*

3. In the instant case, Amendment No. 744 only creates rights in nonprofit organizations. Macon County Investments, Inc. ("MCII"), however, has admitted that it is a for-profit entity. (*See* Plaintiffs' First Amended Complaint For Injunctive and Declaratory Relief at ¶ 2 [Doc. # 20]).The only application challenged by MCII is one that was submitted by and in the name of Plaintiff Reach One. Consequently, Plaintiff MCII lacks standing to pursue this action and is due to be dismissed.

WHEREFORE, Sheriff Warren renews the arguments made in his Motion to Dismiss and Motion to Dismiss Plaintiff's First Amended Complaint. Accordingly, Sheriff Warren urges the Court to dismiss Plaintiff Macon County Investments, Inc.'s claims with prejudice.

Respectfully submitted,

s/Fred D. Gray, Jr.
One of the Attorneys for Defendant,
David Warren, Sheriff of Macon County,
Alabama

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CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Kenneth L. Thomas, Esq.
Ramadanah M. Salaam, Esq.
Gary Grasso, Esq.

And I certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

None.

s/Fred D. Gray, Jr.

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EXHIBIT "A"